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UNCLAS ROME 000709

SIPDIS

DEPT FOR EB/IPC WILSON
DEPT PASS TO USTR- BPECK
COMMERCE FOR KSCHEGELMILCH
COMMERCE ALSO FOR USPTO - DURBAN/PLASHLEY-JOHNSON,

USDOC FOR 4220/MAC/EUR/SED/DDEFALCO

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TAGS: [KIPR](#) [ECON](#) [ETRD](#) [IT](#)

SUBJECT: MISSION ITALY INPUT FOR 2004 SPECIAL 301 REVIEW

Ref: (A) State 29551

(B) 03 Rome 5420

11. Summary: Mission Italy recommends that Italy remain on the 301 watch list. Overall frequency of copyright piracy has remained essentially stable since 2000, when Italy's copyright law was enacted. Nonetheless, total losses due to piracy are mounting, and Italy's piracy and counterfeiting rates are among the highest in Western Europe. Law enforcement activity by prosecutors and Italy's Finance Police (Guardia di Finanza) has become more aggressive, but street vending and local enforcement remain significant problems. Industry associations are concerned that high levels of traditional piracy are now combined with the use of digital copying and counterfeiting technologies and new distribution modalities. Tenacious problems persist with the judiciary and, with respect to business software stickering and the SIAE, Italy's copyright royalty collection agency. Following the June 2003 U.S.-Italy Joint Declaration on Cooperation on Intellectual Property and subsequent outreach efforts on the part of the Embassy (ref b), magistrates are becoming more aware of economic and criminal implications of piracy. End Summary.

PIRACY RATES

12. According to our industry and Finance Police contacts, piracy and counterfeit rates in Italy have remained essentially stable since the enactment of the 2000 Copyright Law. The software industry (BSA - Business Software Alliance) reports piracy at about 47 percent of the market with estimated annual losses in the range of 510 million USD. This rate represents a two-percent increase over the previous year, compared with falling rates elsewhere in Europe. The music industry (FPM) reports piracy at approximately 25 percent of the market with estimated yearly losses to industry in the range of 150 million USD. The film industry (FAPAV) reports piracy at approximately 20 percent of the market with losses to industry in the range of 140 million USD. Another concern expressed by all industry representatives is that high levels of traditional piracy in Italy are now combined with the use of digital copying and counterfeiting technologies and new distribution modalities. Damages from digital piracy are not quantifiable.

LEGAL ENVIRONMENT AND ENFORCEMENT

13. There have been several positive developments. Associations and enforcement agencies believe that Italy's legislative environment is among the more advanced in Europe with the 2000 Copyright Law providing for relatively severe criminal penalties for serious piracy violations. A new law also requires the immediate destruction of pirated material. Industry associations tell us that enforcement activities at the national level have been more aggressive, with the Finance Police being particularly committed to combating pirates. Italian national enforcement agencies and some local judiciary representatives seem to understand the economic and social implications of piracy, and the close ties between pirates and organized crime. Naples prosecutors and police officials have carried out several investigations that reveal such connections, uncovering a number of well-organized groups operating internationally, from Europe to Asia. High-level Finance Police officials stress that profits from counterfeiting activities are just part of a wider web of criminal activity, including narcotics, arms and human trafficking. According to IP industry representatives, many Italian prosecutors are active in the prosecution of piracy violations. Anti-mafia prosecutors have expressed their commitment to investigating piracy connected to mafia organizations.

THE WEAK LINKS: LOCAL AUTHORITIES

14. On the other hand, our IP industry contacts lament weak enforcement by local administrations. Enforcement varies from city to city, depending upon municipal officials. In general,

local authorities are reluctant to dedicate significant energy to combating pirates and counterfeiters and tend to underestimate the problem. For example, the mayor and prefect in Rome have been unwilling to allow police to act systematically against street vendors of pirated/counterfeited material. As a result, such street sales have continued largely unimpeded. This inaction, according to our industry sources, causes immediate economic damage, and perpetuates the perception among citizens that piracy and counterfeiting are minor offences, and that street vending of illegal products is acceptable. A Naples retailers' association has publicly criticized the lack of action by local authorities, calling for stronger measures against street vendors selling counterfeited products directly in front of stores in Naples shopping areas. In Milan, by contrast, local police are cracking down on street vending, making thousands of seizures of counterfeit goods annually.

AND JUDGES

15. Aside from the lack of attention by local authorities, judges are considered the real weak link in combating piracy in Italy. Most judges still view piracy as a petty offence. They argue that it is better for street vendors sell counterfeit goods than to commit more serious crimes. Magistrates do not associate piracy with organized crime and financial fraud. They are often unwilling to convict, arguing that "minor" economic crimes do not justify criminal treatment. As a result, existing laws are loosely applied, or not applied at all. The situation may improve as a result of the U.S.-Italy Joint Declaration of Cooperation, signed June 20, 2003, regarding exchanges on the judicial aspects of IPR protection. Another example of Italy taking IP more seriously is the creation in 2002 of a dozen new specialized administrative and civil IPR court sections. While these sections focus on civil litigation, they have raised the profile and importance of IPR protection, and magistrates are now more aware of the economic implications of IP violations.

SIAE -- THE STICKER PEOPLE

16. In early 2003, Italy amended the implementing regulations of the 2000 copyright law to permit routine exemptions from the SIAE sticker for business software. However, the BSA remains concerned with the current SIAE sticker waiver procedure since, while free of direct costs, it imposes heavy administrative and procedural burdens on the business software industry. Moreover, BSA claims that the sticker waiver in its current form leaves unresolved the serious problems related to protection of products that are not stickered. Some IP industry representatives maintain that software lacking the SIAE sticker, although legitimate, may not be protected under the current laws.

17. We have received no complaints/information regarding government use of pirated software.

COMMENT

18. Industry contacts recommend that Italy remain on the 301 Watch List. We agree. While law enforcement agencies and prosecutors have increased their commitment to combating piracy, magistrates and local authorities, as well as many in the business community, still remain largely non-engaged. A continued vigorous outreach effort, which Embassy, Consulates and industry associations are pursuing, is still warranted. End Comment.

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